any Part 90 service or to narrowband PCS. As the Commission notes, the amount of spectrum allotted to these services is extremely limited; with a total allocation of only 2 MHz in any geographic area, it would be impossible for 220 MHz to offer service competitive with cellular or other broadband licensees. Further, 220 MHz was designed to serve as a testing ground for the provision of communications services on extremely narrow, 5 khz-bandwidth channels.

50. Such narrow slivers of spectrum create unique challenges for licensees. 220 MHz is the only two-way service authorized under Part 90 or Part 22 which cannot offer its customers full duplex, telephone-like communications. For the foreseeable future, it is technologically unavailable and 220 MHz customers must "push to talk". This aspect of ultra-narrowband service robs 220 MHz of any claim to service that is competitive with cellular or wide-area 800 MHz services.

51. Nor is 220 MHz competitive with narrowband PCS services. First, 220 MHz channels are much "narrower" than narrowband PCS channels: 5 khz, compared with 50 or 12.5 khz.[16/] Thus, narrowband PCS operators will not face the same channel-capacity limitations as 220 MHz licensees. Also, as currently visualized, narrowband PCS providers will offer advanced messaging services such as acknowledgment paging and various paging information services, designed for individual consumers. 220 MHz equipment, on the other hand, is currently designed to provide two-way, interconnected, primarily voice dispatch service, to "fleet-type" business

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[16/] Thus, the maximum allocation of three narrowband PCS channels in a geographic area would mean the equivalent in spectrum of 30 220 MHz channels. See 47 C.F.R. § 99.405(b).

customers. Business data transmission services may also be provided in the future. AMTA submits that 220 MHz will not compete with, and is not substantially similar to, narrowband PCS. Thus, AMTA believes 220 MHz rules need not be conformed to those governing other CMRS services.

B. Existing 220 MHz Licensees Must Be Provided Symmetry in Regulation

52. Under the language of the 2nd R&O, applicants which receive their first license grant in a reclassified CMRS service before August 10, 1993 are entitled to a three-year transition period to CMRS regulations, and will be able to modify and/or expand their systems under the existing Part 90 rules during that period. Those licensed after that date are immediately subject to CMRS rules. Order ¶ 281. 53. During the court challenge to the 220 MHz proceeding following its 1992 lottery, the FCC printed and mailed 220 MHz licenses to those already selected in that lottery without a great deal of urgency. As a result, approximately ten to twenty percent of licensees were physically issued licenses after the August 10, 1993 licensing cutoff date. These licensees are not entitled to the three-year transition to CMRS regulation because of the randomly unfortunate date printed on their licenses.

54. This bifurcation of a new communications industry appears inconsistent with the very idea of regulatory symmetry. AMTA submits that the outcome was not intended by Congress or the Commission in formulating its definition of CMRS, and urges the Commission to modify its interpretation of the transition period to provide

regulatory symmetry among 220 MHz licensees.[17/]

C. Existing Licensees Must Be Allowed to Modify Their License Parameters Before New Licenses Are Awarded

55. The initial filing window for 220 MHz applications in May, 1991 was short. Applicants rushed to complete and file their applications without full knowledge of the capabilities and limitations of 220 MHz service. Since receiving their licenses, many licensees have come to realize that they cannot provide efficient service coverage under the current parameters of their authorizations.

56. Many 220 MHz licensees have applied for, and received, Special Temporary Authority (STA) to relocate or otherwise modify their facilities while the Commission's 220 MHz application window remains closed. In spite of the uncertainty inherent in an STA, licensees have constructed systems and initiated service to customers. However, those systems will be discontinued if they are not able ultimately to convert their authorizations to permanent status. Their facilities will be closed down if new parties are issued grants with operating parameters which would preclude the FCC from granting that conversion. Should the FCC open a filing window for both new applications and modifications by existing licensees, conflicting applications could mean the denial of necessary modifications and a resulting loss of authorization for licensees already providing service.

57. AMTA respectfully submits that the Commission could not intend to interrupt the provision of new communications services in this way. Therefore, with the

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[17/] AMTA has previously brought this issue to the Commission's attention in its Petition for Reconsideration of the Second Report and Order, filed May 19, 1994.

exception of applications from Public Safety entities, AMTA urges the Commission to limit any new filing window for 220 MHz services first to modifications by existing licensees. This would ensure that existing licensees can efficiently use their assigned spectrum, and would provide the Commission with an updated portrait of 220 MHz coverage throughout the nation prior to its grant of additional licenses.

D. Regional 220 MHz Licensing Must Promote Both Rapid Service to the Public and Vigorous Competition

58. The FCC seeks comment on whether it should allow regional licensing of 220 MHz systems, and incorporates into the FNPR a Petition for Declaratory Ruling filed by SunCom Mobile & Data, Inc. (SunCom). SunCom's Petition seeks a determination that its proposed aggregation of multiple licenses into a multi-market, multi-channel regional network will not violate § 90.739 of the Commission's Rules, 47 C.F.R. § 90.739. Its attached Request for Rule Waiver seeks permission to "build out" its proposed network over an eight-year construction schedule.

59. AMTA does not oppose regional 220 MHz systems in principle; indeed, given the limited capacity of 220 MHz channels, aggregation of a certain number of five-channel licenses in a geographic area may be the most efficient way for the industry to provide service to the public. However, the Association believes any regional licensing scheme must encourage the prompt delivery of communications services to the public, and must ensure that enough spectrum remains for healthy competition among licensees. AMTA here presents its proposal for regional 220 MHz licensing.

60. Of the 200 220 MHz channels available in each geographic area, only 120 are currently available for commercial, non-nationwide use in every part of the country.

See 47 C.F.R. §§ 90.717, 90.719. AMTA submits that vigorous competition among local and regional licensees would not be possible if one operator were allowed to aggregate a large percentage of this limited number of channels. It therefore proposes that regional licensees be limited to holding ownership interest in eight five-channel trunked systems, or a maximum of forty individual channels, in each geographic area.

61. AMTA submits that limited aggregation of multiple systems is consistent with the rules governing this allocation.[18/] In order to provide a viable, regional system, regional entities have "communications requirements" different from single-site, local licensees. Allowing aggregation of systems as proposed will promote full utilization of this frequency band, and thereby provide service to a wider portion of the public than would otherwise be possible. Moreover, limiting the total number of channels available to any regional operator will ensure that more than one entity will be able to enter the regional 220 MHz market.

62. The Commission has graciously extended the construction deadline for non-nationwide 220 MHz licensees to December 2, 1994, in recognition of the uncertainty caused by the court challenge to the Commission's application processes for this service. While this has greatly helped local licensees' efforts to construct and begin operation of their systems in a timely fashion, AMTA submits that this period is insufficient for regional licensees to develop multi-market systems. Some form of

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[18/] "No licensee will be authorized more than one system in the 220-222 MHz band in a single category . . .within 64 kilometers (40 miles) of an existing system authorized to that licensee in the same category, unless the licensee can demonstrate that the additional system is justified on the basis of its communications requirements." 47 C.F.R. § 90.739.

extended implementation schedule and limited waiver of § 90.725(f), 47 C.F.R. § 90.725(f), is necessary to allow network development.

63. SunCom's Request for Rule Waiver proposes an eight-year construction schedule for its system. AMTA is opposed to this excessive length of time. 220 MHz licenses have been issued; equipment is currently available from multiple manufacturers. SunCom provides no support for its unusual request, and AMTA believes such an extended construction schedule would only further delay an industry that has already been several years in the making. It would not be in the public interest. The Association notes that wide-area 800 MHz ESMR systems, incorporating dozens of channels and markets, have been granted a maximum of five years in which to build and begin operation of their systems. AMTA proposes a maximum three-year construction schedule for regional 220 MHz systems, with interim construction benchmarks.

64. All local licensees are currently subject to the December 2, 1994, construction deadline and should have begun the process of developing their facilities at this time. Therefore, AMTA believes it is reasonable to require that twenty percent (20%) of any multi-market 220 MHz system be constructed by the December 2, 1994 deadline. AMTA further suggests that an additional thirty percent (30%) of the system, for a total of fifty percent (50%), be completed within one year of the effective date of regional 220 MHz licensing rules. Seventy-five percent (75%) should be completed in the second year, and the entire system constructed and operational at the end of the third year.

65. The benefits of channel aggregation and an extended implementation

schedule should be available only to viable systems that are truly multi-market in nature. Therefore, AMTA proposes a minimum of forty sites be required for eligibility under the regional 220 MHz licensing rules.

66. Further, larger, multi-market systems could provide regional entities with more capacity than that given to nationwide commercial 220 MHz licensees, who are licensed for only five channels each. These licensees were subject to extensive financial showings prior to receiving their license grants.[19/] Regional proposals such as SunCom's are likely to include most of the top urban areas of the country, and entities will be in an excellent competitive position due to their large number of channels. Therefore, AMTA submits that these entities, who may be able to concentrate on the most profitable markets within a nationwide system, be subject to similar financial showing requirements. Such requirements will serve to curb speculation in regional systems by entities which do not have a strong commitment to completing their systems and providing prompt service to the public.

VIII. CMRS SPECTRUM CAP

67. The Commission, on its own motion, has reconsidered the decision adopted in the instant proceeding and included a proposal for a CMRS spectrum aggregation limit. FNPR ¶ 86-195. The FCC has tentatively determined to adopt a 40 MHz limit on the aggregation of CMRS spectrum generally, a cap which mirrors the restriction placed on ownership of broadband PCS capacity, with the possibility of a

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[19/] See 47 C.F.R. § 90.713.

modest upward adjustment to permit flexibility in the provision of both broadband and narrowband service. FNPR ¶ 93. The Notice proposes to establish standardized geographic areas within which the cap would be imposed. FNPR ¶ 99-100. It also recommends that CMRS ownership interests of five percent or more be sufficient to warrant attribution, and that a CMRS licensee serving ten percent or more of the population in a designated area be subject to the cap in that area. FNPR ¶ 101-2.

68. AMTA opposes adoption of a CMRS spectrum cap. The FCC's current approach of addressing ownership limitations on a service-by-service basis allows the agency to "finetune" its efforts to promote competitive opportunities. With the possible exception of the federally-mandated cellular duopoly, this approach has produced a robustly competitive wireless marketplace. Moreover, there is no record support for such a sweeping restriction. No evidence has been offered that suggests a need to establish ownership limitations across the very broad range of CMRS services, none of which can currently be deemed to be capable of "functional equivalency" with cellular or PCS. Furthermore, the difficulty of developing useable regulations regarding the relevant geographic areas, ownership percentages and service area overlaps for application of such a cap cannot be overestimated. For these reasons, the Association urges the Commission not to adopt a cap on the aggregation of CMRS spectrum.

69. At the outset, it is important to distinguish the rationale supporting the FCC's decision regarding limits on the ownership of PCS capacity from the cap proposed in the instant proceeding. First, the adoption of an "intra-PCS" ownership limitation is consistent with rules in virtually every service regulated by the FCC. The agency has

routinely endeavored to promote competition within various services by establishing restrictions on the aggregation of spectrum in defined geographic areas.[20/] Moreover, the Commission had developed a substantial, compelling record before adopting a specific PCS/cellular aggregation limit.[21/] The possibility that cellular licensees might use their uniquely dominant market position to impede the development of new PCS services prompted the FCC to limit cellular participation despite the recognized expertise and economies of scale and service which might otherwise result. PCS MO&O ¶ 105. The very substantial 25 MHz allocation already granted to each cellular licensee in each market, combined with their ten-plus year headstart in the wireless marketplace and their already significant level of market penetration, amply justified the FCC's carefully crafted ownership limitations.

70. No such analysis compels the instant proposal. Indeed, the Notice introduces this subject by noting the dramatically increased amount of spectrum which recently has been made available for services the FCC would define as CMRS. FNPR ¶ 86. Surveying the broad variety of bands and service offerings which will comprise the wireless industry (most of which have existed for decades without adverse competitive effect) could reasonably have caused the FCC to conclude that the

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[20/] See, e.g., 47 C.F.R. § 22.901(b)(5) (limiting substantial cross-ownership of competing cellular systems); 47 C.F.R. § 90.627(b) (prohibiting SMR ownership of more than one unloaded system within forty miles); 47 C.F.R. § 73.3555 et seq.

[21/] Cellular licensees are limited to a 10 MHz PCS block in the same service area in which they already control 25 MHz of cellular spectrum. Memorandum Opinion and Order, GEN Docket No. 90-314, at ¶ 98-146 (adopted June 9, 1994, and released June 13, 1994) ("PCS MO&O").

introduction of yet additional offerings would further enhance an already competitive environment. Instead, the Commission suggests that the mere possibility that providers of these services might become competitors over time, even if their services are distinguishable today, warrants consideration of an overall CMRS spectrum cap. FNPR ¶ 91. The FNPR therefore requests comment on whether all, or only certain, CMRS services should be included in this cap, what the cap should be, and how it should be implemented.

71. It is AMTA's firm conviction that adoption of a CMRS spectrum cap will inhibit, not enhance, competition. The FCC has already determined that no mobile service, with the possible exception of cellular, has market power. 2nd R&O ¶ 137. The non-cellular and PCS services which could be included in this cap all operate in a spectrum-constrained environment in which frequencies are doled out on an incremental basis, typically only after the licensee has demonstrated that its existing capacity is fully used. The existing restrictions on the ability of these licensees to aggregate spectrum within their discrete services dictate against the prophylactic measures proposed herein.

72. This is true even for wide-area SMR systems which the Commission optimistically, but as yet inaccurately, classifies as enjoying "broadband" capability comparable to cellular and PCS. By contrast with both of those generously spectrum-endowed allocations, SMR, even so-called wide-area SMR, cannot be considered to have broadband license grants. Cellular and broadband PCS are awarded 25 MHz and 30 or

10 MHz grants respectively in a defined geographic area.[22/] Within that area, they have the exclusive right to use those frequencies in any system configuration that otherwise satisfies the FCC's requirements. Frequency coordination is required only at the borders of their markets.

73. SMRs, including those migrating to wide-area "cellular-like" configurations, must implement their systems in a much more complicated and less accommodating environment. Unlike cellular or PCS, wide-area SMR licensees do not have a geographically defined market area or "clean" frequencies. These systems co-exist with facilities operated by numerous third-party co-channel licensees who are entitled to full protection from interference. They are authorized on a frequency-by-frequency, site-by-site basis, with the licensee limited at every site to those frequencies which can be used without causing harmful interference to those unrelated, co-channel licensees. Moreover, the frequencies they do employ are not necessarily contiguous. The 800 MHz spectrum for which SMRs have primary eligibility is comprised of four distinct groups of channels scattered throughout the band, and often interleaved among frequencies used by Public Safety, Business and Industrial/Land Transportation licensees. The Commission correctly notes that these existing limitations on SMR spectrum aggregation "impose constraints on the ability to provide an array of competitive CMRS services that do not exist where spectrum is licensed in contiguous blocks." FNPR ¶ 96

[22/] The 10 MHz broadband PCS allocations are viewed within that context as relatively modest grants which will be useful for satisfying specific, narrower market niches. This is notable as the entire 800 MHz SMR allocation is only 14 MHz with 25 KHz channel bandwidths as opposed to cellular's 30 KHz channels. 900 MHz SMR was allocated only 5 MHz and has 12.5 MHz channel bandwidths.

74. These existing regulatory impediments should not be compounded by an unnecessary CMRS spectrum cap which will only act to inhibit the ability of SMRs to establish systems capable of competing with broadband CMRS. This industry is at a critical stage of its development. It is in the process of attracting the capital investment required to fund the system implementation necessary to compensate for the lack of clear, contiguous spectrum within neatly defined market areas. The industry also intends to work with the FCC to modify the existing regulatory scheme and enhance further its ability to participate actively in the CMRS marketplace, thereby expanding the competitive offerings available to the American public. It will be unable to do so, however, if its development is arrested because of a lack of investment possibilities attributable to adoption of the CMRS cap proposed herein.

75. AMTA urges the FCC not to proceed with its CMRS spectrum aggregation proposal. However, if the Commission does elect to adopt a cap, it must resolve a number of complex issues. The Association would first recommend that an overall CMRS spectrum cap should be more expansive than the 40 MHz cap on PCS spectrum alone. The inherent differences among various CMRS services, in terms of allocation size, channel capacity, service restrictions and other technical and operational limitations, dictate against simply mimicking the aggregation cap imposed on ownership of fungible CMRS spectrum. In particular, if the FCC includes SMR systems it must develop a formula by which it can equitably compare SMR channels to those employed in cellular and PCS. This will require some method of pro rating based on the narrower bandwidth and lack of geographic exclusivity attributable to SMR spectrum. For example, it is not

appropriate to equate a 30 KHz bandwidth frequency which may be used by a cellular licensee anywhere within its CGSA to a 25 KHz bandwidth SMR channel which can only be used at some undetermined number of sites in a wide-area system from which adequate separation for co-channel licensees can be provided. While AMTA is not yet prepared to suggest what formula might be reasonable, it is obvious that, at a minimum, their different channel bandwidths give cellular a 1/6 channel capacity advantage over SMR.

76. Even then, the FCC would be left with the formidable task of devising an approach by which it could rationally equate the service areas of these disparate systems. As the agency has noted, cellular and PCS are granted in tidy, geographically discrete market areas, while all other CMRS systems are licensed and have expanded on a site-by-site basis without regard to particular geographic boundaries. FNPR ¶ 99. AMTA does not disagree that using standardized areas for purposes of the cap would create less of an administrative burden, but questions how the agency proposes to handle this "apples to oranges" comparison.

77. A wide-area SMR operator might have only a single site within a specific geographic area, at which only some portion of its channels can be used because of proximate co-channel licensees. The difficulty of equating that operation with a cellular licensee entitled to the entire MSA or RSA, and to its entire complement of 416 channels is substantial, perhaps insurmountable. The same complexities arise when attempting to define the service area overlap used to calculate attribution. There is no direct comparison between the capacity capability of a 30 MHz PCS license or 25 MHz cellular

license authorized for exclusive use of its frequencies throughout the defined area versus a wide-area SMR system licensed for a limited number of sites and frequencies in the same general area.

78. Finally, if the FCC nonetheless determines to proceed with adoption of a CMRS spectrum cap, the Association urges that the ownership attribution level be increased to at least forty percent, unless a party is determined to have actual control at some lower level. The percentage proposed in the Notice would impose an unjustified paperwork burden on both the licensees and the FCC staff in an era when government is attempting to minimize the same. Many CMRS systems will be funded through venture capital, the public markets, or some combination of both. It will be difficult, if not impossible, for a licensee to monitor each investment it is able to attract for purposes of satisfying the cap limitations. Attribution of ownership to such non-controlling, minority interests is not necessary to satisfy the FCC's objective, would be an administrative burden, and would substantially disadvantage the proponents of embryonic systems, such as wide-area SMR, vis a vis more established competitors.

IX. LICENSING RULES AND PROCEDURES

79. The Budget Act provides that those heretofore private radio systems that are reclassified as CMRS will be "treated as common carriers for purposes of the [Communications] Act." FNPR ¶ 106. The FCC has already elected to forbear from applying certain Title II obligations on CMRS licensees generally, and is considering the

issue of further forbearance in specific instances in a related proceeding.[23/] However, the FNPR also notes that there are specific Title III licensing requirements applicable to common carriers that will also be applied to reclassified CMRS providers. This matter is of particular time sensitivity because those not entitled to grandfathered status under the transition period will become subject to CMRS requirements upon the effective date of the rules adopted pursuant to the instant Notice. The Commission has, therefore, proposed certain measures to conform the reclassified CMRS licensing requirements to the statutory requirements of common carriers under Title III.

A. Applications Forms and Procedures

80. One element of the FCC's approach is adoption of an application form which can be used by all CMRS and PMRS applicants in the terrestrial mobile services. FNPR ¶ 108-114. This form would replace the multitude of differing applications used in the various services. It includes both a generic portion applicable to all eligibles, and schedules tailored to applicants for specific services. The proposed Form 600 is designed to facilitate electronic filing and automated entry of licensing information. It will also be the vehicle for collecting the information needed to determine if an applicant is properly classified as CMRS or PMRS.

81. AMTA has not had adequate time to review the proposed form in sufficient detail to endorse it. The Association is generally supportive of any FCC action that promises to simplify and streamline application processing. It enthusiastically

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[23/] Notice of Proposed Rule Making, GN Docket No. 94-33 (adopted April 20, 1994, and released May 4, 1994).

supports all efforts to implement an electronic filing process. It is not opposed to the concept of a multi-purpose form, or to the use of the form to determine regulatory status. Nonetheless, the Association does want to ensure that this effort to create a modular document has not unnecessarily complicated what is already a relatively streamlined Private Radio application form. The Form 574 is far from perfect, but it has the advantages of relative simplicity and familiarity. By comparison with the detailed requirements of the Form 401, it is a model of administrative ease. AMTA will need additional time to evaluate the advantages and drawbacks of the proposed document, and to offer constructive suggestions for its improvement if necessary. It anticipates completing that process as soon as practicable and will offer further comments at that time.

B. Application and Regulatory Fees

82. The Notice seeks comments on its proposal to adopt filing and regulatory fees for reclassified private licensees that are identical to those applied to common carriers. FNPR ¶ 115-6. While the Association believes that regulatory parity should extend to parity of fees, it should not precede it. AMTA has already described the dissimilar licensing processes by which previously private and CMRS systems have been authorized. These same distinctions could unintentionally result in imposition of an inequitable fee burden on reclassified licensees. The current licensing fee structure is based on the cost of regulating various classes of licensees, and includes the cost of processing their applications. The regulatory fees were also developed using a service-by-service analysis. When the FCC reconciles these structures so that substantially

similar services are regulated on a comparable basis, including the way individual transmitter sites are authorized, the FCC should also adopt equivalent fee obligations.

C. Public Notice and Petitions to Deny

83. The FNPR notes that Section 309(b)(1) of the Act requires that common carrier applications, other than minor amendments, be placed on Public Notice for thirty days prior to grant. Subsection (d) of that same provision permits the filing of petitions to deny during the Public Notice period. FNPR ¶ 117. The FCC questions whether these statutory requirements can be applied to reclassified CMRS licensees without adversely affecting the speed and efficiency of the licensing process. FNPR ¶ 116.

84. AMTA is not enthusiastic about the prospect of applying these statutory obligations to the reclassified CMRS services.[24/] Despite the FCC's best efforts to discourage such practices, these procedural safeguards are sometimes used solely to delay and harass competitive filings. Such abuses will be no easier to prove or deter in respect to these reclassified entities. Nonetheless, the Association recognizes that the FCC is not empowered to forbear from applying these procedures. It can only urge the Commission, first, to limit to the extent possible those applications which are defined to require Public Notice, and, second, to take the strongest possible action against those who abuse the agency's process in their use of these procedures. AMTA also hopes to work with the

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[24/] AMTA is also uncertain how the FCC intends to implement this process when only certain SMR, 220 MHz, or Business licenses will be subject to these rules upon their adoption because the majority of applications are filed by entities entitled to the three-year transition period. This will mean that some relatively small percentage of the total number of applications in these services will be placed on Public Notice for an extended period of time.

FCC to establish processes which will facilitate prompt agency action on such petitions, and thereby discourage the submission of purely obstructionist filings

D. Mutually Exclusive Applications/Competitive Bidding

85. The same legislation that established the CMRS concept and directed the FCC to implement the rule changes proposed herein also authorized the Commission to use competitive bidding, or auction, procedures in instances of mutual exclusivity in certain services. 47 USC § 309(j). The FCC subsequently adopted rules which incorporate that legislative directive, and specified the services in which these procedures will be employed.[25/] That Order provided that eligible Part 22 applications would be subject to competitive bidding, and that applications in certain reclassified Part 90 services would be as well. The FCC deferred a decision on local 220 MHz licenses until the service develops sufficiently to evaluate whether it would qualify for auction procedures.

86. In the instant Notice, the FCC has tentatively concluded that, as a general matter, competitive bidding is an appropriate, publicly beneficial licensing vehicle for assigning CMRS spectrum. FNPR ¶ 121. It nonetheless notes the corollary Congressional directive that the agency should avoid mutual exclusivity in its application and licensing procedures to the extent practicable. 47 USC 309(j)(6). The FCC states that it intends to use both first-come, first-served procedures and competitive bidding in appropriate circumstances, but also makes clear that auctions are generally preferable

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[25/] Second Report and Order, GN Docket No. 93-253, FCC 94-61 adopted March 8, 1994, released April 20, 1994).

because they are more likely to discourage unqualified applicants. FNPR ¶ 122. Further, the Notice views as inconsistent the possibility that initial applicants in some CMRS services would be subject to competitive bidding while applicants in others would be awarded licenses on a first-come, first-served basis. FNPR ¶ 124.

87. AMTA is not in a position to comment on the optimal licensing scheme for Part 22 initial applicants. However, its extensive experience with Part 90 licensing procedures prompts it to support the broadest possible use of first-come, first-served assignment schemes as being in the public interest. The FCC currently assigns 800 MHz SMR spectrum on that basis exclusively. Applications are processed in order of receipt, with applications received on the same day ranked in order of randomly assigned file numbers. In the event the FCC does not have frequencies for assignment, the application is placed in queue on a "wait list" for processing when and if channels become available. 47 C.F.R. § 90.611(d). This system is perceived by the industry as an equitable method of assigning scarce spectrum resources. It has been employed without legal challenge for almost two decades, and has facilitated market entry by numerous entities representing a broad range of financial stature. It should be abandoned only for the most compelling public interest reasons.

88. This same approach may not be feasible at 900 MHz, at least at such time as the FCC reopens this band for new applicants. The FNPR correctly notes that all recent actions making spectrum for commercial service generally available have generated significant numbers of applications from legitimate applicants and speculators alike. FNPR ¶ 125. If the FCC creates opportunities for regional or even national 900

MHz SMR networks, that problem is likely to be exacerbated, in which case competitive bidding may be appropriate. However, as described earlier, the Association urges the Commission first to permit existing 900 MHz licensees to expand their operations throughout the defined geographic area, and then to open this spectrum to new applicants.

89. AMTA also agrees with the Commission regarding the need to analyze separately the appropriate licensing procedures for 800 MHz wide-area SMR systems. FNPR ¶ 126. The interest in participating in the provision of this service has been so substantial that there is only limited unassigned 800 MHz spectrum remaining in all but the most underpopulated regions of the country. Systems have been proposed, and in many instances are being implemented, in all major market areas, as well as in most secondary and tertiary markets and their environs. The majority of wide-area licensing now consists of the consolidation of existing systems and geographic areas. In AMTA's opinion, this market structure is not well suited for competitive bidding. Indeed, since the vast majority of these applications propose modifications of existing systems, it is questionable whether they would even satisfy the statutory criteria for use of this licensing scheme. AMTA recommends that the FCC defer any decision on this point until it has determined what licensing approach it intends to adopt for wide-area 800 MHz SMR generally.

E. Amendment of Applications and License Modification

90. As noted above, Section 309 of the Act requires Public Notice of initial applications and major amendments thereto filed by common carriers. The FNPR

proposes to adopt the same definitions of "major" and "minor" amendments for reclassified Part 90 CMRS applications as have been applied to Part 22 applications. FNPR ¶ 129-34. Major amendments for Part 22 applicants are those which propose: (1) a substantial change to the technical proposal in the application; (2) an expansion of the proposed service area; or (3) a substantial change in ownership or control. The same criteria are used in determining whether an application for license modification is considered "major" and therefore subject to the notice and filing procedures described above. The Notice questions whether these definitions should be the same for any Part 90 service deemed substantially similar to a Part 22 service to which they are applied. It also asks whether a modification labelled as major should necessarily be subject to the auction procedures applicable in instances of mutual exclusivity.

91. AMTA accepts as reasonable the criteria used to determine whether the modification of an application is considered major. They are similar to those used today in the processing of Private Radio applications. The fact that they will cause an application to be placed on public notice and subject it to petitions to deny is not pleasing to the Association, but is likely unavoidable given the statutory language.

92. AMTA also agrees with the FCC's tentative determination that applications should not necessarily be subject to the competitive bidding procedures simply because the amendment would be classified as major for purposes of Section 309 of the Communications Act. FNPR ¶ 132. Although such applications are treated as "new" in that respect, the legislation implementing the auction rules did not intend that competitive bidding would be permitted "in the case of a . . . modification of the

license."[26/] As noted in the FNPR, Congress did not distinguish between major and minor modifications for this purpose. AMTA submits that the FCC should not either except, as suggested in the Notice, in the extraordinary case wherein the modification proposed would fundamentally alter the nature or scope of the service provided. AMTA is confident that the FCC can handle those highly unusual situations on a case-by-case basis.

F. Conditional and Special Temporary Authority

93. AMTA agrees with the Commission's proposal to reconcile the Part 90 and Part 22 pre-grant construction requirements by adopting the more liberal Part 90 rules for all CMRS services. FNPR ¶ 135-8. The Association would also prefer to see the more flexible Part 90 procedures for Special Temporary Authorizations applied universally, but has been unable to see how that approach can be conformed to the statutory requirements.

G. License Term/Renewal Expectancy

94. AMTA supports the FCC's proposal to establish a uniform ten-year license term for all CMRS licensees. It is particularly appropriate to adopt a longer license term as the CMRS industry embarks upon the implementation of complex, geographically expansive systems which typically require "extended implementation." Retention of the five-year license grant would mean that licenses would be expiring at the same time initial system construction was being completed. The Association also urges the FCC to continue its current policy toward renewal expectancy. While certain egregious

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[26/] H.R. Rep. No. 103-213, 103d Cong., 1st Sess. (1993) at 253.

conduct, in particular misrepresentation or failure to disclose to the FCC, could cause the Commission to determine that a licensee lacked the necessary qualifications to warrant that expectancy, such instances are likely to be few. They are best resolved on an individual basis.

H. Assignment of Licenses and Transfer of Control

95. The Commission proposes to allow the assignment or transfer of most CMRS licenses upon system implementation and initiation of service. It also looks favorably on the transfer of unconstructed station licenses when the transaction is involuntary, pro forma, or does not involve a de facto change in control. Finally, it questions whether there should be conditions on the assignment or transfer of even constructed wide-area CMRS systems, including wide-area SMR systems. FNPR ¶ 141-6.

96. The Association endorses adoption of rules permitting assignments of unconstructed facilities when the ownership change is pro forma. It also recommends a flexible approach when a party seeks to acquire an ongoing communications business where some of the stations have not yet been placed in operation. However, AMTA disagrees with the FCC's suggestion that imposition of a holding period before the transfer of a wide-area SMR authorization might be appropriate. Unlike other CMRS systems, wide-area SMR authorizations are granted only to those licensees that propose to reconfigure existing SMR facilities for which they can demonstrate not only construction but aggregate loading. The wide-area systems are typically transferred only in conjunction with an assignment of the underlying authorizations. Under these

circumstances, there can be no suggestion that the parties are trafficking in licenses. Thus, no holding period should be necessary.

97. AMTA also recommends that the FCC take this opportunity to modify its Part 90 assignment and transfer licensing procedures to parallel those used in the Common Carrier and Mass Media Services. Specifically, the Commission should adopt a two-step process whereby the FCC first authorizes the parties to consummate their proposed transaction, and then assigns the authorization once it has been advised that the transaction has occurred. The current procedure is a one-step process in which the license is actually transferred upon processing of the parties initial application. The Commission is never advised as to whether the transaction closed. This system creates substantial business difficulties and should be modified at the earliest possible opportunity.

I. Conversion to CMRS Status

98. The Association agrees with the FCC's assessment that Part 90 licensees must be given some period of time to correct their authorizations to reflect their actual operating parameters, and, thereby, their proper classification as CMRS or PRMS. FNPR ¶ 149-51. For example, many private licensees may have obtained authority to provide interconnected service without actual implementing that option. Their licenses, however, would indicate that they should be reclassified as CMRS. The proposed ninety days to request these changes appears reasonable.

X. CONCLUSION

99. For the reasons described, AMTA urges the Commission to proceed expeditiously to complete this phase of its transitional proceeding, consistent with the recommendations detailed herein.